

SUMMARY REPORT OF INVESTIGATION<sup>1</sup>

## I. EXECUTIVE SUMMARY

Date of Incident:	April 30, 2015
Time of Incident:	2:00 a.m.
Location of Incident:	[REDACTED] Chicago, IL
Date of COPA Notification:	May 2, 2015
Time of COPA Notification:	2:01 p.m.

On April 30, 2015, at or about 2:00 a.m., Officer [REDACTED] was on patrol, at or near Madison St. and Racine Ave. in Chicago, IL. He was flagged down by taxi driver [REDACTED] [REDACTED] who reported a black, male passenger had just fled his cab without paying, and ran towards a local bank parking lot. Officer [REDACTED] radioed the incident into dispatch, and observed an individual matching the description [REDACTED] walking westbound on Madison St. Officer [REDACTED] exited his marked SUV and approached the individual. During the stop a physical altercation ensued; Officer [REDACTED] attempted, unsuccessfully, to handcuff Mr. [REDACTED] and called for assistance. Sergeant [REDACTED] and a second assist vehicle with two officers arrived, and Mr. [REDACTED] was then forcibly handcuffed. Paramedics were subsequently called to treat a bleeding wound to Mr. [REDACTED] right ear, and he was thereafter taken to the [REDACTED] District for processing. A Tactical Response Report (“TRR”) was completed by Officer [REDACTED]. The incident was not captured on video.<sup>2</sup>

Mr. [REDACTED] subsequently filed a complaint with IPRA on May 2, 2015, and provided a sworn statement alleging he was unjustifiably grabbed by Officer [REDACTED] was choked by the neck, forced to the ground, punched, swore at, and physically injured. Mr. [REDACTED] was subsequently released on bail and sought medical care. He was diagnosed with bruises, lacerations, and a fractured wrist.<sup>3</sup>

<sup>1</sup> On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Therefore, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

<sup>2</sup> No In-Car Camera (“ICC”) footage depicting the interaction was recovered by CPD.

<sup>3</sup> Mr. [REDACTED] subsequently filed a civil complaint related to this incident (Case 16 CV [REDACTED] Circuit Court of Cook County, IL), and alleged, in part, Officer [REDACTED] placed him in a “chokehold,” punched him in the head, and caused cuts, bruises, and a fractured wrist. (See Attachment 41).

**II. INVOLVED PARTIES**

Involved Officer #1:	Star # [REDACTED] Employee ID # [REDACTED] Date of Appointment: [REDACTED] 1997, Police Officer, [REDACTED] District, DOB: [REDACTED] 1968, M, Black.
Involved Officer #2:	Star # [REDACTED] Employee ID # [REDACTED] Date of Appointment: [REDACTED] 1990 Sergeant [REDACTED] District, DOB: [REDACTED] 1957, F, Caucasian.
Involved Individual #1:	Complainant-Victim, [REDACTED] 40, M, Black, [REDACTED] Chicago, IL 60612.
Involved Individual #2:	Witness [REDACTED] 37, M, Other, [REDACTED] Chicago, IL 60645.
Involved Individual #3:	Witness [REDACTED] A.P.N., Age Unknown, F, [REDACTED] Chicago, IL 60607.

**III. ALLEGATIONS**

Officer	Allegation	Finding
Police Officer [REDACTED]	<ol style="list-style-type: none"><li>1. It is alleged that on April 30, 2015, at approximately 2:00 a.m., in the vicinity of [REDACTED] the accused officer placed Mr. [REDACTED] in a chokehold, in violation of Rules 2, 6, 8 and 9.</li><li>2. It is alleged that on April 30, 2015, at approximately 2:00 a.m., in the vicinity of [REDACTED] the accused officer threw [REDACTED] to the ground, in violation of Rules 2, 6, 8 and 9.</li><li>3. It is alleged that on April 30, 2015, at approximately 2:00 a.m., in the vicinity of [REDACTED] the accused officer punched [REDACTED] about the head, in violation of Rules 2, 6, 8 and 9.</li></ol>	Not Sustained.  Exonerated.  Not Sustained.

	4. It is alleged that on April 30, 2015, at approximately 2:00 a.m., the accused officer directed profanities at [REDACTED] in that Officer [REDACTED] called him a "Motherfucker," in violation of Rules 2, 6, 8 and 9.	Not Sustained.
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#### IV. APPLICABLE RULES AND LAWS

##### Rules

Rule 2: Prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

Rule 6: Prohibits disobedience of an order or directive, whether written or oral.

Rule 8: Prohibits disrespect to or maltreatment of any person, while on or off duty.

Rule 9: Prohibits engaging in any unjustified verbal or physical altercation with any person, while on or off duty.

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##### General Orders

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##### **G-03-02: Use of Force Guidelines (2015)<sup>4</sup>**

"[...]GENERAL INFORMATION Chapter 720, Article 5, Section 7-5, of the Illinois Compiled Statutes provides in part:

"A peace officer ... need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to effect the arrest and of any force which he reasonably believes to be necessary to defend himself or another from bodily harm while making the arrest."

##### **"III. DEPARTMENT POLICY**

"A. When a Department member engages a member of the public, the member will do so in such a manner which affords that person the respect and dignity to which all persons are entitled. The use of excessive force or unwarranted physical force or unprofessional conduct by a Department member will not be tolerated under any circumstances, and all members will strictly adhere to the provisions of the Department directive entitled "Prohibition Regarding Racial Profiling and Other Bias Based Policing."

"B. Department members will use an amount of force reasonably necessary based on the totality of the circumstances to perform a lawful task, effect an arrest, overcome resistance, control a subject, or protect themselves or others from injury.

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<sup>4</sup> See Attachment 58.

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“C. As set forth by the United States Supreme Court in Graham v. Connor, 490 U.S. 386 (1989), the central inquiry in every use of force is whether the amount of force used by the officer was objectively reasonable in light of the particular circumstances faced by the officer.

“1. Reasonableness is not capable of precise definition or mechanical application. Circumstances that may govern the reasonableness of using a particular force option include, but are not limited to:

- “a. the severity of the crime at issue,
- “b. whether the subject poses an immediate threat to the safety of officers or others,
- “c. whether the subject is actively resisting arrest or attempting to evade arrest by flight.

“2. The reasonableness of a particular use of force will be judged under the totality of the circumstances viewed from the perspective of a reasonable officer on the scene.

“D. The Department has adopted a Use of Force Model in order to provide members guidance on the reasonableness of a particular response option[....]”

#### **G03-02-01: Use of Force Model (2015)**

“[...] C. When force is applied a member will escalate or de-escalate to the amount of force which is reasonably necessary to overcome the subject’s resistance and gain control.

“1. Members are not required to start at the lowest levels of the Use of Force Model; they will select the appropriate level of force based on the subject’s actions.

“2. Members will modify their level of force in relation to the amount of resistance offered by the subject.

- “a. As the subject offers less resistance, the member will lower the amount or type of force used.
- “b. As the subject increases resistance, the member may increase the amount or type of force used[....]”

#### **G-03-02-02: Force Options (2015)**

“B. Resister: a person who is uncooperative. Resistors are further subdivided into two categories: “[...]

“2. Active resister: a person whose actions attempt to create distance between that person and the member’s reach with the intent to avoid physical control and/or defeat the arrest[....]

“[...]

“(a) Stunning. Stunning is diffused-pressure striking or slapping and is an attempt to increase control by disorienting the subject and interfering with the subject’s ability to resist[....]”

“[...]

“C.3(b) Chokeholds are only justified as use of deadly force.

“(b)(1) A chokehold is defined as applying direct pressure to a person’s trachea (windpipe) or airway (the front of the neck) with the intention of reducing the intake of air.

“(2) Holding or control techniques involving contact with the neck, but which are not intended to reduce the intake of air, are not defined as chokeholds.

“(3) Under no circumstances will a member use a chokehold, or any lesser contact with the neck area to prevent the destruction of evidence by ingestion[....]”

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## V. INVESTIGATION

### a. Interviews

#### 1. Complainant-Victim [REDACTED]

In an interview with IPRA on May 4, 2015,<sup>6</sup> Complainant-Victim [REDACTED] related that on or about April 30, 2015, at approximately 2:00 a.m., he was walking down the street, towards his home, when a male, black police officer, approximately 5'11"-6 ft. tall, drove up next to him and asked him to remove his hands from his pockets. “[...] [W]hen I first came into contact with the police officer I was walking down the street going home. The police officer pulled up to me and asked me to take my hands out of my pocket. I asked him why and – you know, why was he stopping me. And he repeated to take my hands out of my pocket. And I repeated again, you know, ‘Why, why are you stopping me?’”<sup>7</sup> The officer did not tell him to stop walking, however. The officer exited the squad car, walked behind him, and started choking him.<sup>8</sup> He then knocked Mr. [REDACTED] to the ground and continued choking him with his left arm.<sup>10</sup> The officer then punched Mr. [REDACTED] in the side of the head and called him a “motherfucker.”<sup>11</sup> Shortly after being stopped by the first officer, other officers and paramedics arrived on scene.<sup>12</sup> Once the officers handcuffed him on the ground, he was lifted up and paramedics at the scene examined him for bleeding coming from behind his right ear.<sup>13</sup>

Mr. [REDACTED] further related that he had been in a taxi cab immediately before the encounter with police, and was coming home from a friend’s house party. The taxi driver was “running up the fare” by taking a long route, and Mr. [REDACTED] said he complained to the driver. The driver then told Mr. [REDACTED] not to worry about the fare and so he exited the taxi without paying at or near [REDACTED]  
[REDACTED].<sup>14</sup> Mr. [REDACTED] said he had last consumed alcohol at approximately 5 p.m. on April 29, 2015.

Mr. [REDACTED] expressly denied resisting, flailing, pulling or moving away from officers, or pushing or striking officers.<sup>15</sup>

In addition to the cut behind his ear, Mr. [REDACTED] related suffering bruises, cuts and a fractured left wrist. He stated he didn’t know his wrist was fractured until he went to an urgent care facility the day after he was released from custody.<sup>16</sup> He related the fracture resulted when

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<sup>6</sup> Attachment 20.

<sup>7</sup> See Attachment 20, pp. 12-13.

<sup>8</sup> Id. at pg. 7, ln. 14.

<sup>10</sup> Attachment 20 at pg. 7, ln. 16.

<sup>11</sup> Id.

<sup>12</sup> Id. at pg. 11, ln. 18.

<sup>13</sup> Id. at pg. 14, ln. 9.

<sup>14</sup> Id. at pg. 8, ln. 4.

<sup>15</sup> Id. at pg. 15, ln. 4.

<sup>16</sup> Id. at pg. 17, ln. 14.

the officer took him down and he [Mr. █] likely outstretched his arms, and the officer landed with his weight on Mr. █ back.<sup>17</sup>

## 2. Witness █

In an interview with IPRA on January 20, 2017,<sup>18</sup> Witness █ related that on or about April 30, 2015, at approximately 2:00 a.m., he was working as a cab driver and driving his vehicle. He picked up an individual, now identified as █ at or about N. Clark St. at W. Grace Ave. The passenger, Mr. █ asked to be driven to N. Leavitt St. and W. Washington Blvd. During the ride, Mr. █ “was pretty aggressive. And trying to hit [the] car like he [was] kinda drunk. But [at] Madison and Racine he got outta’ [the taxi].” Mr. █ related he could smell alcohol on Mr. █ and believed he was drunk.<sup>21</sup>

Mr. █ related Mr. █ had repeatedly complained the route taken was wrong and continued kicking the taxi interior to the point Mr. █ told him to stop. Mr. █ then unexpectedly exited the vehicle at N. Racine Ave. and W. Madison St., while the taxi was waiting at a light. Mr. █ slammed the door and walked away towards a bank parking lot. He did not pay the fare.

Mr. █ then flagged down a police officer [Officer █] near the bank parking lot, told him what occurred and described Mr. █. Mr. █ then watched the officer drive around and locate Mr. █. He observed the officer ask Mr. █ to stop but he would not.<sup>24</sup> The officer then exited and told Mr. █ he had to pay the taxi fare.<sup>25</sup> Mr. █ however, spoke to the officer, became aggressive and then pushed him. The officer then grabbed Mr. █ and called for backup using a phone or radio.<sup>27</sup> He then twisted Mr. █ arm backwards and put him down onto the ground.<sup>28</sup> Approximately 10 officers later arrived while Mr. █ was still detained on the ground.<sup>29</sup> Mr. █ heard Mr. █ tell officers he did not do anything [wrong]. Mr. █ related seeing the responding officers lift Mr. █ up and put him into a squad car, but he was unaware where they eventually took him.<sup>30</sup>

## 3. Accused Police Officer █

In an interview with IPRA on September 21, 2015,<sup>31</sup> Police Officer █ related that on or about April 30, 2015, at approximately 2:00 a.m., he was on duty and patrolling

<sup>17</sup> Id. at pg. 18, ln. 8.

<sup>18</sup> Attachment 42.

<sup>21</sup> Id. at pg. 3, ln. 15.

<sup>24</sup> Id. at pg. 5, ln. 30.

<sup>25</sup> Id. at pg. 6, ln. 12.

<sup>26</sup> Id. at pg. 6, ln. 26.

<sup>27</sup> Id. at pg. 7, ln. 19.

<sup>28</sup> Id. at pg. 7, ln. 31.

<sup>29</sup> Id. at pg. 8, ln. 17.

<sup>30</sup> Id. at pg. 10, ln. 17.

<sup>31</sup> Attachment 40.

beat [REDACTED], alone, in his squad vehicle. A cab driver on Madison St. flagged him down and told him that a “guy jumped out of his cab without paying. And ran into the bank area.”<sup>33</sup> He told the cab driver someone was assigned to the job, but that he would drive through the parking lot to help try and locate the suspect.

Officer [REDACTED] drove through the parking lot and adjacent areas, and eventually spotted a man matching the suspect’s description walking westbound on Madison St., now known as Mr. [REDACTED]. Officer [REDACTED] asked Mr. [REDACTED] to come to the car but he would not cooperate and instead replied words to the effect of: “why the fuck you bothering me. I didn’t do nothing”<sup>35</sup> When Mr. [REDACTED] continued walking away, Officer [REDACTED] exited the vehicle and approached him. He asked Mr. [REDACTED] to remove his hands from his pockets several times, but he refused.<sup>36</sup> His eyes were glassy, his speech slurred, and he appeared intoxicated and angry.<sup>37</sup> When asked, Mr. [REDACTED] denied being in the taxi, and denied not paying the fare.<sup>38</sup> The situation escalated and Officer [REDACTED] asked Mr. [REDACTED] to put his hands behind his back – which he refused.<sup>39</sup>

Officer [REDACTED] initiated an emergency takedown and called for assistance, attempting to handcuff Mr. [REDACTED]. He could not handcuff Mr. [REDACTED] however, because Mr. [REDACTED] held his hands underneath his body, on the ground.<sup>40</sup> Only once Sergeant [REDACTED] Officer [REDACTED] and another officer arrived, could they successfully handcuff Mr. [REDACTED].<sup>41</sup>

Officer [REDACTED] did not recall Mr. [REDACTED] complain of injury until he was already in a [REDACTED] District holding cell, at which time he stated his wrists hurt because the handcuffs were tight. Officer [REDACTED] did not otherwise remember calling or seeing EMTs assist at the scene or thereafter, and did not recall seeing any blood or obvious injury to Mr. [REDACTED] at the scene. Officer [REDACTED] related he himself did not offer Mr. [REDACTED] any medical assistance.<sup>44</sup> When Mr. [REDACTED] said his wrists hurt because of the handcuffs, Officer [REDACTED] related he told him: “You don’t have no cuffs on ya at this point.”<sup>45</sup>

Officer [REDACTED] completed a TRR and documented he used force because Mr. [REDACTED] was abating arrest. He related in his statement he did not use a chokehold<sup>47</sup> nor recalled placing an arm around Mr. [REDACTED] neck during the incident.<sup>48</sup> He admitted to using an open hand strike which may or may not have landed on the head, but did so only after Mr. [REDACTED] refused to release his

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<sup>33</sup> Id. at pg. 5, ln. 17.

<sup>35</sup> Id. at pg. 7, ln. 9.

<sup>36</sup> Id. at pg. 7, ln. 27.

<sup>37</sup> Id. at pg. 8, ln. 4.

<sup>38</sup> Id. at pg. 9, ln. 18.

<sup>39</sup> Id. at pg. 9, ln. 28.

<sup>40</sup> Id. at pg. 11, ln. 7.

<sup>41</sup> Id. at pg. 12, ln. 16.

<sup>44</sup> Id. at pg. 15, ln. 26.

<sup>45</sup> Id. at pg. 21, ln. 7.

<sup>47</sup> Id. at pg. 21, ln. 11.

<sup>48</sup> Id. at pg. 17, ln. 31.

arms.<sup>49</sup> He also admitted having possibly used profanities during the incident. He denied directing any such profanities towards Mr. [REDACTED] however.<sup>50</sup>

#### 4. Witness Sergeant [REDACTED]

In a November 1, 2015, signed, written response to IPRA, **Witness Sergeant [REDACTED]** [REDACTED] proffered the following relevant information in a written report.<sup>51</sup>

Sergeant [REDACTED] responded to a call for assistance by Officer [REDACTED] that a suspect in a theft case, now known as [REDACTED] refused to comply [with officer [REDACTED] demands] and was walking away. The offender had been positively identified by the victim, a cab driver.

Sergeant [REDACTED] did not observe the initial contact with Mr. [REDACTED] but she did observe Mr. [REDACTED] resist, and saw Officer [REDACTED] then initiate a takedown and administer open-hand strikes. She did not see exactly where the blows landed, but she opined the actions were all consistent with the Department's then-current Use of Force Model.

Officer [REDACTED] never placed Mr. [REDACTED] in a "chokehold" and Sergeant [REDACTED] did not hear him call Mr. [REDACTED] a "motherfucker".

Sergeant [REDACTED] assisted handcuffing Mr. [REDACTED] on the ground, and she did not observe any injuries to him, nor did he complain to her of injury.

Sergeant [REDACTED] opined the actions of Officer [REDACTED] were within Department guidelines, because Mr. [REDACTED] was an active resister, and Officer [REDACTED] actions prevented the situation from escalating to the point where greater injury to Mr. [REDACTED] or Officer [REDACTED] could have resulted.

#### 5. Witness [REDACTED] APN

During a May 3, 2015 scene canvass, neighborhood resident [REDACTED] [REDACTED] related to IPRA investigators that she witnessed a man (now known to be Mr. [REDACTED] apparently mentally ill or under the influence, screaming at police outside her home on the date and time at issue, and that the man's hostility made her concerned for the officers' safety. She also stated the officers did not curse at or touch him. She related she returned inside her home prior to the man being handcuffed or arrested, and did not witness any officer misconduct during the incident, or thereafter.

##### b. Deposition Testimony<sup>52</sup>

In a January 25, 2017 deposition taken incident to 16 CV [REDACTED] Mr. [REDACTED] testified that at approximately 5:00 p.m. the night of the incident, he consumed one alcoholic drink at a male friend's residence.<sup>53</sup> He thereafter went home, and subsequently visited a female friend, [REDACTED]

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<sup>49</sup> Id. at pg. 18, ln. 7.

<sup>50</sup> Id. at pg. 18, ln. 17.

<sup>51</sup> See Attachment 36.

<sup>52</sup> Attachment 54.

<sup>53</sup> Id. pg. 22.

████████ in Wrigleyville.<sup>54</sup> After departing Ms. ██████ residence, he took a taxi home, but exited the cab near Madison St., because the driver had “[run] up the fare.”<sup>55</sup> Mr. ██████ testified that after he complained about the fare, the driver told Mr. ██████ it was fine if he left the cab without paying. After exiting the taxi, he walked westbound down Madison St. at Racine St., when he was confronted by a CPD officer driving an SUV. Mr. ██████ stated the officer demanded to see his hands, that [Mr. ██████] asked what he had done, and then walked away. Immediately after, a male, black officer exited a CPD squad vehicle and “assaulted” Mr. ██████.<sup>58</sup> The officer followed him down Madison St., and then grabbed him from behind with his arm around Mr. ██████ neck/throat, took him to the ground, and began striking him on the head.<sup>59</sup> Mr. ██████ told the officer he was not resisting, however the officer kept striking him, and called him a “motherfucker.”<sup>60</sup> Mr. ██████ was then handcuffed and arrested.<sup>61</sup> Mr. ██████ admitted he did not remember parts of the incident, because it occurred two years prior and because he did not wish to recall the incident’s unpleasant details.<sup>62</sup> Mr. ██████ admitted that while still laying on the ground, before placing his hands behind his back to be handcuffed, he instead reached for a mobile phone in his front pocket – which the officer then knocked away.<sup>63</sup> After being pulled up, other officers and an ambulance were present, and paramedics thereafter treated a cut behind Mr. ██████ right ear. He was then taken to the police station in a squad vehicle.<sup>64</sup> After later being processed and placed in a lockup cell, Mr. ██████ recalled telling officers his left arm felt broken and he needed medical attention.<sup>65</sup> He then told officers to cancel the request for medical care, because he wanted to be released from custody as soon as possible, and not have to wait for a medical transport.<sup>66</sup> Mr. ██████ recalled being released that afternoon, that he visited his son’s school, and then went home. He then traveled to Stroger Hospital’s ER, but left because the ER wait was too long. He went home, and the following day traveled to a UIC<sup>69</sup> ambulatory clinic where he was examined and diagnosed with a broken left wrist.<sup>70</sup> He was subsequently seen that week by an orthopedist at UIC Hospital, and underwent corrective surgery at UIC in May 2015. Mr. ██████ admitted he was prescribed post-operative physical therapy, but he did not take it because he had difficulty making an appointment. His wrist has lost strength since the incident, and he experiences aches and pains. Eventually, the criminal charges against him were dropped.<sup>73</sup>

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<sup>54</sup> Id. pg. 24. Mr. ██████ could not recall any address or contact information for any witnesses named, including his female friend, ██████.

<sup>55</sup> Id. pg. 27.

<sup>58</sup> Id. pg 37.

<sup>59</sup> Id. pgs. 39-40.

<sup>60</sup> Id. pg. 41.

<sup>61</sup> Id. pg. 42.

<sup>62</sup> Id. pg. 44.

<sup>63</sup> Id. pg. 46-47.

<sup>64</sup> Id. pg. 50-52.

<sup>65</sup> Id. pg. 56.

<sup>66</sup> Id. pg. 57.

<sup>69</sup> University of Illinois Hospital & Health Sciences System.

<sup>70</sup> Attachment 54, pg. 67-68.

<sup>73</sup> Id. pg. 80.

### c. Digital Evidence

In-car camera (“ICC”) and Body-worn camera (“BWC”) video were not recovered for this incident. Area surveillance camera footage was also not recovered.<sup>74</sup>

### d. Documentary Evidence

#### Department Reports and Records

The **OEMC Event Query and Unit Query** (# █) <sup>75</sup> documented that on April 30, 2015, a mobile number phoned 911 to report a dispute with a Flash Taxi customer who refused to pay his fare.

The **OEMC Event Query and Unit Query** (# █) <sup>76</sup> additionally documented that the suspect jumped out of the cab near 1240 W. Madison St. at Elizabeth Ave., and subsequently refused CFD medical assistance at the scene.

A **Tactical Response Report**<sup>77</sup> completed April 30, 2015, documented Officer █ used force against subject █ on the date and time(s) at issue. The TRR classified Mr. █ as an active resister because he pulled away, stiffened his body and did not follow verbal directions. An emergency takedown and handcuffing was employed, as were open-hand strikes, member presence, verbal commands and wristlocks. The TRR documented Mr. █ was intoxicated, not armed, not injured and/or did not report being injured.

The **Original Case Incident Report**<sup>78</sup> documented cab driver █ flagged down a CPD officer to report a passenger exited his cab without paying. The responding officer observed and stopped a subject matching the description provided by the cab driver, and questioned him. The subject refused to remove his hands from his pockets and refused to stop. The offender pulled away and put both hands above his head at which point the officer performed an emergency takedown. The subject continued to lock his arms and wrists and could only be handcuffed once Sergeant █ and other officers arrived to assist. The report documented the subject refused medical care at the scene from [CFD] ambulance #28.

The **Arrest Report**<sup>79</sup> documented that █ was arrested on April 30, 2015, and charged with disorderly conduct, theft of services, and resisting arrest, following his alleged

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<sup>74</sup> See also Attachment 39.

<sup>75</sup> Attachment 17.

<sup>76</sup> Attachment 18.

<sup>77</sup> Attachment 15.

<sup>78</sup> Attachment 16.

<sup>79</sup> Attachment 14.

fleeing a taxi cab without paying. The report documented Mr. [REDACTED] refused to obey a police order(s) to stop, make his hands visible, and that he maneuvered his body to resist attempts to handcuff and arrest him. The report documented that the lockup keeper observed “obvious pain or injury” upon arrival and that “Subject stated that his left hand is injured but refused medical aid before entering lockup.” The report documented Mr. [REDACTED] was received in the central male lockup at 7:20 a.m. and was released on a \$1,500 recognizance bond at 12:45 p.m.

The **CFD EMS Emergency Event Request Incident Record**<sup>80</sup> documented an ambulance was dispatched to 1240 W. Madison St., at or about 2:05:58 a.m. on April 30, 2015. The record documented that no EMS aid was needed and/or the patient refused care. The record further documented the individual had jumped from a taxi and was injured, and was also under arrest and being transported per CPD.

**Evidence Technician Photographs**<sup>81</sup> taken by Officer [REDACTED] on May 4, 2015, depicted approximately 30 images of [REDACTED] body, including his head, chest, and arm(s), and multiple areas of what appear to be lacerations, bruises, and areas of redness or discoloration. A bandaged left arm is also clearly visible in the photographs. A scab behind his ear appeared to document an abrasion/laceration in the process of healing. His forehead also displayed red marks of possible abraded/healing skin.

A **civil complaint**<sup>82</sup> filed in 16 CV [REDACTED] pleaded three counts against the City of Chicago including claims of excessive force against [REDACTED] by Officer [REDACTED] failure to intervene by Sergeant [REDACTED] and malicious prosecution by Officer [REDACTED]. The civil case was voluntarily dismissed pursuant to a monetary settlement of \$100,000, on or about July 27, 2017.<sup>83</sup>

The related **criminal docket** entered in case [REDACTED]<sup>84</sup> documented that Mr. [REDACTED] was charged with disorderly conduct, theft of services, and resisting an officer. The case was dismissed with leave to reinstate on July 23, 2015.

#### e. Physical Evidence

##### 1. Medical Records

Relevant medical records were obtained by IPRA from the University of Illinois Hospital & Health Sciences System (“UIH”).<sup>85</sup> On May 1, 2015, UIH Mile Square Urgent Care clinic notes

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<sup>80</sup> Attachment 22.

<sup>81</sup> Attachment 24.

<sup>82</sup> Attachment 53.

<sup>83</sup> See Attachments 52 and 57.

<sup>84</sup> Attachment 60.

<sup>85</sup> Attachment 23.

documented [REDACTED] was examined and complained of pain and swelling in the left wrist. He related he was incarcerated on [April 30<sup>th</sup>] and a police officer fell on his wrist, and he thereafter developed pain, swelling and decreased range of motion in the left wrist and fingers.<sup>86</sup> The medical records noted Mr. [REDACTED] was not in acute distress and all other systems besides the left arm were negative -- including the neck, which was supple and without tenderness. Abrasions on the left elbow and face were noted as having been sustained during the arrest.<sup>87</sup> Radiographs of the left arm revealed a fracture of the left wrist; he underwent surgery on May 7, 2015 to repair his wrist.<sup>89</sup>

## VI. LEGAL STANDARD

For each Allegation COPA must make one of the following findings:

1. Sustained - where it is determined the allegation is supported by a preponderance of the evidence;
2. Not Sustained - where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence;
3. Unfounded - where it is determined by clear and convincing evidence that an allegation is false or not factual; or
4. Exonerated - where it is determined by clear and convincing evidence that the conduct described in the allegation occurred, but it is lawful and proper.

A **preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that the conduct occurred and violated Department policy. *See Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005), (a proposition is proved by a preponderance of the evidence when it has found to be more probably true than not). If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred, even if by a narrow margin, then the preponderance of the evidence standard is met.

**Clear and convincing evidence** is a higher standard than a preponderance of the evidence but lower than the "beyond-a-reasonable doubt" standard required to convict a person of a criminal offense. *See e.g., People v. Coan*, 2016 IL App (2d) 151036 (2016). Clear and Convincing can be defined as a "degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition . . . is true." *Id.* at ¶ 28.

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<sup>86</sup> Attachment 29, 5/1/15, 3:50 p.m. exam note, [REDACTED] M.D.

<sup>87</sup> Id.

<sup>89</sup> Id. See 5/7/15 operative report, [REDACTED] M.D.

## VII. ANALYSIS

Mr. [REDACTED] credibility is notably diminished in this case, and in relation to each of the allegations made. The weight of objective evidence in this case shows multiple alleged factual claims did not occur, or did not occur as was alleged, thus collectively diminishing Mr. [REDACTED] credibility *in toto*.

To wit: Mr. [REDACTED] claim he only consumed one alcoholic drink, hours before the incident, was directly contravened by third-party witness Ms. [REDACTED] assertion he appeared to be drunk or mentally ill immediately before his arrest, and by Mr. [REDACTED] similar claim that Mr. [REDACTED] was intoxicated inside his taxi. Likewise, Mr. [REDACTED] deposition testimony that Officer [REDACTED] did not tell him to stop walking away before arresting him was directly controverted by Mr. [REDACTED] own sworn IPRA statement that he asked officer [REDACTED] – twice – why the officer was stopping him. Similarly, Officer [REDACTED] Ms. [REDACTED] and Mr. [REDACTED] describe that Mr. [REDACTED] was aggressive and resisting Officer [REDACTED] prior to the emergency takedown. In contrast, Mr. [REDACTED] reported that Officer [REDACTED] approached him and immediately took him to the ground with an arm around his neck. The foregoing material, factual discrepancies vitiate Mr. [REDACTED] credibility and lend greater weight to Officer [REDACTED] and Sergeant [REDACTED] descriptions of events.

### 1. Police Officer [REDACTED]

COPA finds **Allegation #1** that on the date and time alleged, **Police Officer [REDACTED]** while on duty, placed [REDACTED] in a chokehold, without due justification, at or near [REDACTED] Chicago, Illinois is **NOT SUSTAINED**.

Mr. [REDACTED] alleged in his sworn IPRA statement and civil complaint that while peaceably walking on the public way, minding his own business and while not intoxicated, he was stopped by officer [REDACTED] and forcibly, unjustifiably detained -- including being punched in the head and forcibly, injuriously grabbed by the neck -- or, per his corresponding civil complaint, being placed in a “chokehold.” Officer [REDACTED] denied using a chokehold on Mr. [REDACTED] and did not recall placing his arm on Mr. [REDACTED] neck. Neither Sergeant [REDACTED] nor Mr. [REDACTED] reported that Officer [REDACTED] used a chokehold on Mr. [REDACTED].

The preponderance of objective, physical evidence recovered in this case, however, is, at best, unclear as to whether any intentional “chokehold” was employed against Mr. [REDACTED] let alone any officer contact with his throat. To wit: The recovered ET photos showed two or more small areas of redness and laceration on the front of the lower collarbone area. The etiology of the marks is facially unclear. Such marks could potentially be consistent with a chokehold or attempted chokehold, but absent additional objective evidence, do not prove so by even a preponderance. Were a chokehold employed, the neck and other areas *above* the collarbone would reasonably show some indicia of trauma.<sup>92</sup> They did not. Most critically for COPA’s purposes of

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<sup>92</sup> As would other, sub-dermal structures, including the larynx, hyoid bone, other neck structures, or other systems including the lungs, eyes, and brain. Neurological and psychiatric findings consistent with hypoxemia and loss of consciousness would also be present.

review, the proffered medical records did not document *any* patient complaints of, or symptoms or sequelae of strangulation resulting from suffering a chokehold or like throat trauma. Exam results were equally negative in this respect.

Here, the totality of the foregoing objective, physical evidence is thus insufficient to sustain or unfound the allegation of officer use of a chokehold or application of other, serious, injurious force to Mr. [REDACTED] throat.

For each of the multiple foregoing reasons, a finding of NOT SUSTAINED is warranted.

COPA finds **Allegation #2** that on the date and time alleged, **Police Officer [REDACTED]** [REDACTED] while on duty, threw [REDACTED] to the ground, without due justification, at or near [REDACTED] Chicago, Illinois is **EXONERATED**.

It is undisputed that Officer [REDACTED] initiated an emergency takedown against [REDACTED] during his arrest, and that during the takedown, Mr. [REDACTED] most likely broke his wrist. The reasonableness of the takedown, however, remains at issue.

Officer [REDACTED] and CPD records characterized Mr. [REDACTED] as refusing officer demands to stop and come to the car, and remove his hands from his pockets, before being forcibly detained by emergency takedown. Mr. [REDACTED] conversely, testified in his deposition that he removed his hands from his pockets, but did not believe that the officer wanted him to stop. He testified the officer twice told him to remove his hands from his pockets, but not that the officer instructed him to stop. Conversely, in his sworn IPRA statement, Mr. [REDACTED] instead related he questioned Officer [REDACTED] about the reason he was being stopped. The foregoing clearly shows Mr. [REDACTED] knew or understood he was expressly, verbally warned to stop, or that he otherwise *should* stop. (i.e., he contemporaneously recognized the on-duty officer “[was] stopping [him]” incident to a law enforcement-related matter or “street stop”).

Despite the foregoing recognition he should stop, Mr. [REDACTED] admittedly did not stop or come to the officer’s car, but instead continued walking away. For COPA’s purposes of review, therefore, Mr. [REDACTED] was reasonably deemed an active resister, disobeying an officer’s order and moving away to defeat arrest. CPD’s then-current use of force policy allowed officer use of force, including takedowns, to control active resisters or assailants. An emergency takedown is, by its nature, a forceful maneuver in which an individual is quickly brought to the ground, and which carries an inherent risk of injury to both an officer and subject. Notwithstanding the risk(s), however, far more than a preponderance of evidence in this case shows the officer’s actions were duly justified, to stop Mr. [REDACTED] from leaving the scene, and to allow him to be quickly, safely handcuffed. The fact Officer [REDACTED] was the only officer initially present, likewise increased the need to safely gain control over and detain Mr. [REDACTED] as quickly as possible.

The clear and convincing evidence presented in this case, including Mr. [REDACTED] contradictory statements vs. the more consistent statements of CPD personnel and third-party witness Mr. [REDACTED] showed it was more likely that Mr. [REDACTED] physically and verbally resisted Officer [REDACTED] attempts to detain him before the takedown. Ms. [REDACTED] corroborating description of Mr. [REDACTED] erratic behavior added further weight to the foregoing.

For COPA's purposes, injury following an emergency takedown is not per se proof of misuse of or excessive force. Applied here, Mr. [REDACTED] abrasions, lacerations, bruises and wrist fracture were consistent with use of an otherwise justified emergency takedown, and not, alone, indicative of excess force. Mr. [REDACTED] medical records documented he told treaters he believed he fractured his wrist by falling during his arrest, likely by extending his arms while falling forward with the weight of an officer on top of him. This supposition was reasonable and consistent with someone being taken, face-forward, to the ground during an emergency takedown.

For each of the multiple foregoing reasons, a finding of EXONERATED is warranted.

COPA finds **Allegation #3** that on the date and time alleged, **Police Officer [REDACTED]** [REDACTED] while on duty, punched [REDACTED] about the head, without due justification, at or near [REDACTED] Chicago, Illinois, is **NOT SUSTAINED**.

It is undisputed that Officer [REDACTED] struck Mr. [REDACTED] during the encounter. Officer [REDACTED] related in his statement to IPRA that he struck Mr. [REDACTED] with an open hand after he resisted, and in his Answer to Mr. [REDACTED] civil complaint admitted striking Mr. [REDACTED] head, once, with an open hand. Mr. [REDACTED] conversely, complained to IPRA that he was repeatedly punched. Sergeant [REDACTED] reported that she observed Officer [REDACTED] administer open hand strikes.

ET photos taken several days after the incident documented that Mr. [REDACTED] displayed facial injuries, including a healing laceration/abrasion behind his ear and red marks/healing abrasions on his forehead. However, medical records did not document that he complained of punches to the face/head during treatment.

The preponderance of the evidence did not establish whether Mr. [REDACTED] was punched as alleged, or received an open-handed strike(s). Mr. [REDACTED] facial injuries could have occurred during the undisputed emergency takedown. The parties provided conflicting descriptions of the force used; Mr. [REDACTED] credibility is diminished, as described above. For the foregoing reasons, a finding of NOT SUSTAINED is warranted.

COPA finds **Allegation #4** that on the date and time alleged, **Police Officer [REDACTED]** [REDACTED] while on duty, directed profanities against [REDACTED] in that he called him a "motherfucker," at or near [REDACTED] Chicago, Illinois is **NOT SUSTAINED**.

There was no video or audio evidence of the incident and the parties' testimony regarding use of profanity is directly contradictory. Officer [REDACTED] admitted that he may possibly have uttered random expletives during the incident but denied directing profanity at Mr. [REDACTED]. Third-party witness, Mr. [REDACTED] stated that the officers treated Mr. [REDACTED] respectfully, and he did not report that anyone called Mr. [REDACTED] a "motherfucker." This, coupled with Mr. [REDACTED] aforementioned diminished credibility, and Sergeant [REDACTED] denial that she heard Officer [REDACTED] call Mr. [REDACTED] a motherfucker calls the veracity of the allegation into question.

Given the diminished credibility of Mr. [REDACTED] in conjunction with the witness statements, and Officer [REDACTED] report of possibly using profanities, it remains unknown whether Officer [REDACTED] directed the term "motherfucker" at Mr. [REDACTED].

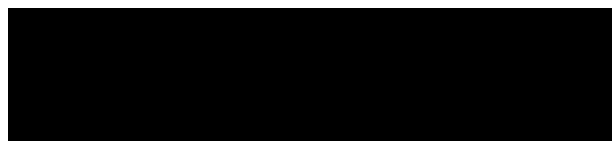
For the foregoing reasons, a finding of NOT SUSTAINED is warranted.

## VIII. CONCLUSION

Based on the analysis set forth above, COPA makes the following findings:

Police Officer [REDACTED]	<ol style="list-style-type: none"><li>1. It is alleged that on April 30, 2015, at approximately 2:00 a.m., in the vicinity of [REDACTED] the accused officer placed Mr. [REDACTED] in a chokehold., in violation of Rules 2, 6, 8 and 9.</li><li>2. It is alleged that on April 30, 2015, at approximately 2:00 a.m., in the vicinity of [REDACTED] the accused officer threw [REDACTED] to the ground, in violation of Rules 2, 6, 8 and 9.</li><li>3. It is alleged that on April 30, 2015, at approximately 2:00 a.m., in the vicinity of [REDACTED] the accused officer punched [REDACTED] [REDACTED] about the head, in violation of Rules 2, 6, 8 and 9.</li><li>4. It is alleged that on April 30, 2015, at approximately 2:00 a.m., the accused officer directed profanities at [REDACTED] in that Officer [REDACTED] called him a "Motherfucker," in violation of Rules 2, 6, 8 and 9.</li></ol>	Not Sustained.  Exonerated.  Not Sustained.  Not Sustained.
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Approved:



03 October 2019

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Angela Hearts-Glass,

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Date

*Deputy Chief Administrator – Chief Investigator*

**Appendix A**

Assigned Investigative Staff

<b>Squad#:</b>		
<b>Investigator:</b>		
<b>Supervising Investigator:</b>		
<b>Deputy Chief Administrator:</b>	Angela Hearts-Glass	